

So this is what the European Way of Life looks like, huh?

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The Polish rule of law crisis cannot be contained nationally (I will not make a corona pun, I will not...). It has been a European rule of law crisis from the outset, and it's no longer just a latent one: For the first time, as far as I know, a court abroad has in fact released a wanted person from custody because extradition to Poland is out of question now after the so-called "muzzle law" against the independent judiciary in Poland has been enacted. The District Court of Appeals of Karlsruhe has made that decision a few days ago. I have been sent the so-far unpublished verdict (Ausl 301 AR 15/19 of 17 February 2020), and it is quite an elevating read.

Let's recall: In 2018, the European Court of Justice decided in the [LM ruling](#) (aka *Celmer*) that the lack of an independent judiciary can in principle be a valid reason to not extradite people wanted under an EU arrest warrant to Poland. But a general rule of law problem is not enough; it must also be shown that the very person in question would be in danger of not getting a fair trial individually. This has caused a lot of anger and disappointment: How would one do that? How is it a court supposed to obtain independent information from a justice system that is no longer independent about how independent it is in a specific case?

The Karlsruhe Court has now resolved the dilemma by sending a catalogue of questions on the independence of the judiciary to Poland, as usual, but not waiting for the answer. The current "judicial reform" already gives rise to a "high probability" that extradition would be unlawful at the moment.

In the specific case in question, the detained alleged fraudster had claimed that "two influential Polish citizens" had bribed witnesses and had him beaten up. Whether this is true or not would have to be decided by the Polish court, assessing evidence and the credibility of witnesses. The Karlsruhe Higher Regional Court no longer wants to rely on the fact that this would be done independently while the judges feel the pressure of the "Muzzle Act" passed at the end of December: This law threatens every judge with disciplinary sanctions up to dismissal if they e.g. "obviously and grossly disregard legal regulations" or "substantially impede the functioning of an organ of justice" or "question the effectiveness of the appointment of a judge or the constitutional mandate of an organ of the Republic of Poland", each of these offenses formulated in a tremendously elastic way and to be judged by disciplinary chambers controlled by the Ministry of Justice.

The Karlsruhe Court believes that there is no "sufficient probability" at the moment that the answers of the Polish authorities would change the picture, and states that "in view of the information available to the public, it cannot at present be assumed that the Polish Government will abandon its plans for judicial reform".

Therefore, the man had to be released, especially since there was no longer any risk of absconding since he "has a permanent residence in Germany and, due to the political development in Poland, he no longer necessarily has to expect his extradition."

Could it be that the CJEU ruling of 2018 has grown teeth in recent weeks after all? The very muzzle that the PiS government has put on their national judges may have unleashed the European ones.

The non-EU country Norway, as mentioned last week, has suspended judicial cooperation with Poland for the same reason. [EIRIK HOLMØYVIK](#) describes the ramifications this decision, which is expressly supported by the Norwegian government.

One of the less talked-about norms of the "Muzzle Act" obliges Polish judges to disclose their membership in associations – including the judges' associations that lead the fight against the PiS "judicial reform". This should probably intimidate the members of these associations and weaken them in the ongoing fight. [ANNE SANDERS](#) explains why this is hardly compatible with the ECHR.

Asylum

Speaking about teeth: On Monday, there will be a hearing before the CJEU on whether an injunction including a million Euro fine will be imposed on Poland in the disciplinary chamber case. This is possible because the Commission has requested such an order. What is still unclear at the moment: will the Commission start an infringement procedure with respect to the "Muzzle Act", too? Or rather: why hasn't it already? EU Justice Commissioner Didier Reynders has announced in the FAZ that he wants to present a recommendation "in a few weeks". Good luck with that, but by then it will probably be too late.

Commission President Ursula von der Leyen, elected into her current office by votes of Fidesz and PiS, apparently still has a lot of troubles to see the necessity of such a lawsuit. Meanwhile, this week, together with her colleagues from the Council and Parliament and the Greek Prime Minister, she was flown around Eastern Greece in a military helicopter, her steely-eyed squint fixed on the border below to detect intruders and convince the Greeks that what the EU has done and still is doing to them is NOT abandonment AT ALL! Neither her precious "geopolitical Commission" nor the European public seem overly concerned about what is happening in Idlib right now, except that Erdogan is expected to stack a few hundred thousand more on top of the 3.5 million refugees he already has, instead of having the cheek to bother us Europeans with money demands. After all, what do we care if those Middle Eastern folks knock each other's heads in as long as, Heaven forbid, we don't have to live through another 2015, right?

Ursula von der Leyen's Commission has proudly announced that it wants to defend our European Way of Life, and, when asked what that is supposed to mean we were told: oh, nothing special at all, just our values, that's all! It's not about

culturalism and exceptionalism, none of that, of course, only super-nice things like democracy, human rights and the rule of law. Article 2 TEU, these are the values of the European Union, this is who we are, we Europeans, this is how we think and this is how we live, we are the living embodiment of these values, even if the Arab and the Yankee and the Chinaman will never understand it.

How these values are realized in the EU has been on display in recent days on the banks of the River Evros, among other places. A young man [has been shot](#), Mohammed al-Arab was his name, he came from Aleppo and 22 is the number of years he and his human rights have lived. He died on Turkish territory, but the bullet, it seems, came from the EU. But wait: it's all fake news, tweets the Greek [government spokesman](#) indignantly! Phew, thank God, I guess we can go back blaming Donald Trump for his immigration policy then.

Well, one might say, awful stuff is happening, but what are you going to do? This time, at least, we are making sure that law and order is upheld. Oh yes, the rule of law is so dear to us, we would kill for it, wouldn't we? The bad news is that, on closer inspection, law and order on the Greek external border of the EU has, in fact, by no means been protected and even less restored, at least not as long as we are referring to the very law to which the EU and its Member States have bound themselves in order to regulate precisely such matters. [MATTHIAS LEHNERT](#) has examined more closely whether there is any valid legal justification for suspending the Greek right of asylum and the pushbacks without any hearing and procedure. Well? Is there? Nope. No such thing. I guess that's, hum, well, how shall I put it? I guess, whatever it is, it is not the rule of law.

Corona

Meanwhile, we keep coughing into the crook of our arms and rinse our hands for minutes under hot water and with plenty of soap so we won't be infected with that virus which was safely in China a minute ago and suddenly is all over the place. Pandemic! Pandemonium! But don't panic, by all means, don't panic.

Epidemic control is hazard control and legally there is nothing special about it, particularly not the fact that it comes with restrictions of fundamental rights, says [ANDREA KIESSLING](#): To keep the population safe from infection with a potentially deadly disease, it's not necessarily disproportionate to impose curfews on contact persons or shut down schools and day-care centres. That might be different if, as in China, entire regions were sealed off, but no-one is suggesting that, so far. Coincidentally, anti-vaxxers have lodged a constitutional complaint in Karlsruhe against compulsory measles vaccination – not really much of a problem under the constitution either, in the author's view.

The situation is different if one looks beyond the everyday infection control law. [ANIKI KLAFKI](#) comes to the conclusion that the German legal system is not at all prepared for a real pandemic, unlike Switzerland, where an epidemic law regulates which level in the federal state has which competences in which cases in order to control the spread of the epidemic.

[ARIANNA VEDASCHI](#) and [CHIARA GRAZIANI](#) call the Covid 19 pandemic a "global threat without a global approach" and identify four "public law lessons" of the current crisis: in terms of information policy, in terms of international cooperation, in terms of internal coordination and in terms of the proportionality of restrictions on freedom.

India, Thailand, Armenia

I'm sorry, but it doesn't get any funnier, I'm afraid. In the **Indian** capital Delhi a mob of Hindu fascists killed about 50 people and injured, beat up and ransacked the homes of a lot more. [KANAD BAGCHI](#) explains the background and sees a pattern at work that resembles the riots of 2002 in Gujarat and 1984 in Delhi, namely ...

"...absolute ruthlessness and complicity. Of the state, the executive, the police, the popular media and in many respects the courts as well, in creating and perpetuating a state of terror while fuelling discrimination and disenfranchisement against minorities, especially Muslims."

In **Thailand**, the constitutional court has banned the country's third largest party and best hope of the opposition against the putschist government. [KHEMTHONG TONSAKULRUNGRUANG](#) explains what has happened and considers the Constitutional Court's decision to be only the latest in a series of examples of judicial overreach resulting from an unhealthy political pursuit of purity that has the opposite effect.

In **Armenia**, or so it seems, the threat is going in the opposite direction: the government is preparing a referendum to remove seven of the country's new constitutional judges from office. But the appearance is deceptive. [GABRIEL AMAS CARDONA](#) explains why this is not as authoritarian an act as it seems.

Germany

[FRAUKE BROSIUS-GERSDORF](#) and [HUBERTUS GERSDORF](#) have taken a close look at last week's decision of the Second Senate of the Federal Constitutional Court allowing a hijab ban against Muslim legal interns in court. Their conclusions are no more sympathetic than those of the other commentators before on Verfassungsblog: That the state has to be neutral in terms of religion means only that it must not identify with a specific religion. As long as no-one claims that the state declares itself Islamic by allowing a hijab-wearing legal trainee take on judicial functions, neutrality is not a relevant issue here at all.

The controversy about children's rights in the *Grundgesetz* is getting some momentum again after Federal Home Secretary Horst Seehofer criticised the approach of the Ministry of Justice as too far-reaching and a petition against the entrenchments of children's rights in the constitution has received 50,000 signatures. [STEPHAN GERBIG](#) considers the "fears" of the sceptics to be unfounded.

The Federal Constitutional Court's ruling on suicide assistance last week has, on the other hand, earned the court a lot of applause. [MARCO SCHENDEL](#) has taken

a closer look at the Senate's concept of "autonomy" and finds it too narrow – with consequences for the case at hand:

Against the background of an exactly conceived notion of autonomy, a general right to suicide including the freedom to assist cannot be interpreted as its expression. Karlsruhe's understanding of this fails due to the principle it claims to enforce.

Finally, I would like to draw your appreciated attention to the [online symposium](#) organized by [ISABEL FEICHTNER and GEOFF GORDON](#), which deals with a concept that is as omnipresent as it is misunderstood in law and politics: value. The contributions are demanding in style and substance but extremely rewarding. After the kick-off by the initiators there are contributions by [FABIAN MUNIESA](#), [KLAUS KEMPTER](#), [GUNTHER TEUBNER](#), [DONATELLA ALESSANDRINI](#), [OLIVER SCHLAUDT](#), [CLAIR QUENTIN](#), [TONI MARZAL](#), [CHRISTINE SCHWÖBEL-PATEL](#), [JULIA DEHM](#), ANNA CHADWICK, JAMEE K. MOUDUD, OUTI KOHONEN and JUHO RANTALA, FLORIAN HOFMANN, NOHAR SHEFFI as well as a final post by the two initiators.

Unfortunately I have to skip the editorial next week. I'm sorry! I'll be back on 20 March.

All the best to you, especially to our meanwhile 287 regular supporters on [Steady](#) and the great people who sent us their Euros via Paypal (paypal@verfassungsblog.de) or bank transfer (IBAN DE41 1001 0010 0923 7441 03) – all highly appreciated and indispensable for our work. The next week will certainly be rough again, I suppose. We will stay tuned!

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